

MANAGEMENT MEMO

NUMBER:

99-12

SUBJECT:

INSTALLMENT PURCHASE AGREEMENTS AND FINANCED LEASE AGREEMENTS FOR GOODS AND SERVICES

DATE ISSUED: 9/13/99

EXPIRES:
When rescinded

REFERENCES:

Public Contract Code Sections 10301, 10320.5 and 12100 et seq.

ISSUING AGENCY:

Department of General Services

Effective immediately, for the purpose of financing or leasing procurements, all agencies are permitted to enter into either installment purchase agreements (commonly referred to in the industry as "lease purchases") or financed leases as described in the Uniform Commercial Code, Section 2A, (commonly referred to as "operating leases") via the Department of General Services, Procurement Division's financial marketplace – "GS \$Mart" or "Lease \$Mart."

GS \$Mart (pronounced "G S Smart") – Installment Purchases

Note: All references within GS \$Mart to "lender(s)," "lend," "lending," "loan(s)," and like terms are used as nomenclatures and for ease of understanding only. Under no circumstances is the use of the GS \$Mart program allowed to incur additional debt to the State of California and its agencies.

GS \$Mart offers tax-exempt rates which are typically half of current commercial lending rates. For this reason, rates negotiated under GS \$Mart tend to be the lowest obtainable and subsequent loans arranged under GS \$Mart are structured to comply with Internal Revenue Service regulations. Thus, agencies should use GS \$Mart for their installment purchase agreements as a matter of convenience, efficiency and substantial cost savings.

Some provisions for entering into an installment purchase agreement include:

- An agency may enter into an installment purchase agreement for a procurement valued up to the limit of the agency's procurement authority, not including the cost of financing. In other words, if an agency's existing procurement authority permits a procurement without financing, then financing the purchase under an installment purchase agreement is permissible.
- Generally, the financed amount of the procurement should be a minimum of \$100,000, including sales tax, as applicable, and any other costs, such as the costs for training, installation and freight, in addition to the costs for the item(s) being purchased. Financing an amount smaller than \$100,000 may not be cost-effective and the decision to do so should be weighed carefully.
- An agency may use a lender that is not a GS \$Mart lender; however, it is strongly recommended that the agency consider the pre-approved GS \$Mart lenders first. Current DGS-approved lenders and financing plans are posted in the GS \$Mart marketplace, on the Procurement Division's Internet home page – www.pd.dgs.ca.gov.
- Obtaining at least three quotes is recommended for funding commitments.
- If, after considering the GS \$Mart lenders, an agency wishes to consider a lender that is not a part of the GS \$Mart program, the agency may 1) proceed through the traditional bid and/or

advertising process of securing financing, or 2) contact the GS \$Mart manager *prior* to proceeding and ask for assistance to qualify the desired lender for the GS \$Mart program. Requirements to do so are found on the Web site under "Lender Qualifications Proposal." This proposal and subsequent approval by the GS \$Mart manager are necessary in order to ensure that the desired lender meets the qualifications for participating in any financing opportunities with the state.

- The above provisions also apply to the following:
 - A procurement based on a California Multiple Award Schedule (CMAS), any master agreement, a single or sole source award or a competitive bid.
 - A procurement with a nominal purchase price at the end of a lease after all lease payments have been made.
- The above provisions do **NOT** apply to operating leases and rental agreements.

All state agencies subject to oversight by the DGS must send a copy of each installment purchase agreement to the GS \$Mart manager who reviews the contract to ensure compliance with Internal Revenue Service code requirements. The GS \$Mart manager also files the necessary tax forms and reports on behalf of the agency and will file the forms/reports for other agencies upon request.

While the GS \$Mart program posts the latest market information, including the DGS-approved lenders and finance rates, on the Internet, state agencies are advised to review this GS \$Mart information periodically for refinancing opportunities and, if advantageous, to execute a refinancing lease purchase contract to realize the cost savings. To ensure a refinancing is executed properly, agencies should contact the GS \$Mart manager before proceeding.

Lease \$Mart (pronounced "Lease Smart") – Financed Leases

NOTE: Under Lease \$Mart, the term must be for a minimum of one year. A term of one year or less is considered a "rental" and, as such, the procurement does not qualify under the auspices of Lease \$Mart. All rental contracts must be reviewed/approved by the Office of Legal Services.

As with GS \$Mart, Lease \$Mart offers agencies financing alternatives, but in the operating lease venue. Also found on the Procurement Division's Internet home page – www.pd.dgs.ca.gov – are Lease \$Mart approved leasing companies and posted lease rates, allowing agencies to shop for the best rate and quickly acquire financing for their procurements. Here again, agencies should use Lease \$Mart for their financed lease agreements as a matter of convenience, efficiency and substantial cost savings.

Some provisions for entering into a financed lease agreement include:

- If there is any chance that the agency may want to own the equipment at the end of a lease, it is strongly recommended to either purchase the equipment outright or utilize the GS \$Mart program, taking advantage of the attractive tax-exempt rates. A financial calculator is available at the Lease \$Mart Internet site to aid in determining the most cost-effective financing vehicle to utilize.
- An agency may enter into a financed lease agreement for a procurement valued up to the limit of the agency's procurement authority, not including the cost of financing. In other words, if an

agency's existing procurement authority permits a procurement without financing, then financing the procurement under a financed lease agreement is permissible.

- Generally, the financed amount of the procurement should be a minimum of \$50,000, including sales tax, as applicable, and any other costs, such as the costs for training, installation and freight, in addition to the costs for the item(s) being purchased. Financing an amount smaller than \$50,000 may not be cost-effective and the decision to do so should be weighed carefully.
- Obtaining at least five quotes is recommended for funding commitments.
- An agency may consider using a lender that is not an approved Lease \$Mart lessor; however, it is strongly recommended that the agency consider approved Lease \$Mart lessors first. If, after considering the Lease \$Mart lessors, an agency wishes to consider a lessor that is not a part of the Lease \$Mart program, the agency may 1) proceed through the traditional bid/advertising process of securing leasing per SAM, or 2) contact the Lease \$Mart manager *prior* to proceeding and ask for assistance to qualify the desired lessor for the Lease \$Mart program. Requirements to do so are found on the Web site under "Lessor Qualifications Proposal." This proposal and subsequent approval by the program are necessary in order for the Lease \$Mart manager to ensure that the desired lessor meets the qualifications for participating in any financing opportunities with the state.
- The above provisions also apply to the following:
 - A procurement based on a California Multiple Award Schedule (CMAS), a master agreement, a single or sole source award or a competitive bid.
 - A procurement with a nominal purchase price at the end of a lease after all lease payments have been made.
- The above provisions do **NOT** apply to rental agreements and installment purchases.

All state agencies subject to oversight by the DGS must send a copy of each financed lease agreement to the Lease \$Mart manager who reviews the contract to ensure program compliance.

Per the State Administrative Manual (SAM), Section 3700, a lease/purchase analysis is required for all proposed equipment leases. In the past, this analysis was completed via a "Lease Versus Purchase Analysis – Equipment" form found in SAM (3700) A-1. To modernize this process, the Lease \$Mart program is in the development stages of automating the form, which will automatically run the calculations for the buyer. Thus, until the form is completed and installed on this Web page, please continue using the hard-copy form found in SAM.

For more information regarding this memo, please contact the financial marketplace Patrick Mullen at (916) 327-2600, Department of General Services, Procurement Division.



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